IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4942 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHENDRABHAI @ TIPO SANABHAI PADHIYAR - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS SUBHADRA G PATEL for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
Mr. N.D. Gohil, Asst. GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 05/07/2006

ORAL JUDGMENT

By filing this petition, the petitioner – detenu has challenged his detention order 22/02/06 by which he is detained under the provisions of Gujarat

Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

In the grounds of detention, there is a reference to a solitary case pending against the detenu under the Bombay Prohibition Act. The case is registered against the detenu under the provisions of the Bombay Prohibition Act for dealing in foreign liquor. The detaining authority has found that the activities of the detenu are such that it will prejudicially affect public health.

Learned advocate for the detenu submitted that except the solitary case, there is no other material to indicate that the activities of the detenu are prejudicial to public health. It is also submitted by the learned advocate for the detenu that there is no credible material to show that by dealing in the so called liquor, the detenu has tried to harm public health. He further submitted that there is no report of any laboratory to the effect that consumption of the so called liquor is dangerous to public health so as to attract the provisions of the Act.

In order to substantiate her say, learned advocate for the detenu has relied upon the decision of the Supreme Court in District Collector, Ananthapur and another vs. V. Laxmanna reported in 2005 AIR SCW 1822 : (2005) 3 SCC 663 In the aforesaid case, the Supreme Court has observed as under in paragraphs 7 and 8 :

"7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.

8. Therefore, while holding that dealing with arrack which is dangerous to public health would become an act prejudicial to the maintenance of public order attracting the provisions of the Act. It must be held that it is obligatory for the detaining authority to provide the material on which it has based its conclusion on this point. Therefore, we are in agreement with the High Court that if the detaining authority is of

> the opinion that it is necessary to detain a person under the Act to prevent him from indulging in sale of goods dangerous for human consumption the same should be based on some material and the copies of such material should be given to the detenu."

Learned Assistant Government Pleader is not in a position to substantiate his say that the activities of the detenu are prejudicial to public health or that the detenu has violated public order.

Having gone through the records, there is nothing to show that the activities of the detenu is likely to prejudicially affect public health. There is no credible material from which it can be said that the activities of the detenu is prejudicial to public health. At the most it can be said that the activities of the detenu is in breach of law and order, and not public order. The petition is required to be allowed as from the available records it cannot be said that the activities of the detenu is against public health.

In the result, the petition is allowed. Order of detention passed against the detenu dated 22.02.06 is quashed and set aside. The detenu: MAHENDRABHAI @ TIPO SANABHAI PADHIYAR is ordered to be released forthwith unless he is required in connection with any other offence.

Learned advocate for the detenu makes a voluntary statement that the detenu will not leave

village Narsipur upto 30th September 2006 except for attending the criminal case and/or for complying with the conditions of bail, if any granted. This voluntary statement is recorded. It is for the learned Assistant Government Pleader to inform the concerned authorities about the voluntary statement and it is for the concerned authorities to monitor the same.

Rule is made absolute, with no order as to costs.

[P. B. MAJMUDAR, J.]

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